STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF IOWA, Public Employer, and STATE POLICE OFFICERS COUNCIL, Certified Employee Organization/Petitioner.	)	CASE NO. 4600

DECISION ON REMAND

This case is before the Public Employment Relations Board (PERB) on remand with instructions from the Iowa Supreme Court pursuant to the Court's ruling in State of Iowa, Iowa Department of Personnel v. Iowa Public Employment Relations Board and State Police Officers Council, Supreme Court No. 113/95-397 (May 22, 1996).

BACKGROUND

This case was initiated by the filing of a petition for amendment of bargaining unit with PERB by the State Police Officers Council (SPOC) seeking to amend the job classifications of Park Ranger I, II and III (employed by DNR) into an existing certified bargaining unit represented by SPOC. The State resisted the requested amendment, and an evidentiary hearing was held before a PERB administrative law judge.

The ALJ issued a proposed decision and order on February 12, 1993. One of the issues before the ALJ concerned the State's claim that the park rangers were not eligible for inclusion in any bargaining unit because they are "supervisory" employees excluded

from the coverage of Iowa Code chapter 20 by virtue of their alleged supervisory authority over park attendants and DNR aides also employed by DNR. The ALJ examined the record in light of the criteria set out in Iowa Code section 20.4(2) for determining supervisory status and determined that most were not met by the park rangers. The ALJ concluded, however, that the park rangers were "supervisors" within the meaning of section 20.4(2) based solely on their authority to hire seasonal DNR aides. The ALJ, in dicta, opined that the park rangers might also be supervisory based upon their authority to "assign and direct" both the park attendants and the DNR aides.

At the time the ALJ's proposed decision and order was issued, neither park attendants nor DNR aides were included in any bargaining unit.

SPOC appealed the ALJ's proposed decision to the full PERB. After receiving the oral and written arguments of the parties and reviewing the existing evidentiary record, we issued our Decision on Appeal on October 13, 1993. Implicitly agreeing with the ALJ's conclusions that most of the supervisory criteria were not evidenced in the record, we focused our decision on the ALJ's conclusions regarding supervisory status with which we disagreed. Applying federal precedent regarding supervisory status, we concluded that the park rangers' authority to hire seasonal DNR aides (who were not in the bargaining unit to which the rangers sought inclusion) was insufficient to confer true supervisory status upon the rangers within the meaning of section 20.4. As to

the ALJ's dicta about the rangers' assignment and direction of park attendants and DNR aides, we concluded that the record was more indicative of "leadman" status than true supervisory authority. We thus concluded that the park rangers were not excluded from the Public Employment Relations Act's coverage as "supervisors" and that they should be amended into the SPOC-represented bargaining unit.

Between the time of the issuance of the ALJ's proposed decision on February 12, 1993, and the issuance of the Board's Decision on Appeal on October 13, 1993, the bargaining unit status of the park attendants changed. On June 22, 1993, the park attendants were amended into an existing bargaining unit represented by AFSCME/Iowa Council 61. No request was made by either party during the agency proceedings to reopen the record to include this fact.

Following the issuance of our final decision, the State sought judicial review by the Polk County District Court. The State requested that the court remand the case to PERB and order the record reopened to reflect the change in the bargaining unit status of the park attendants. The district court denied the State's request and affirmed our final decision.

The State appealed the district court's judgment to the Iowa Supreme Court. Among the issues raised by the State on appeal was whether the district court erred in refusing to remand the case to PERB for reopening of the record to include the fact that the park attendants' bargaining unit status had changed.

On May 22, 1996, the Iowa Supreme Court issued a ruling in the State's appeal, stating:

> The State raises three issues, but one of them, which involves a procedural matter, is dispositive of the case at this time. The board relied heavily in its final decision on the presumed fact that park attendants and DNR aides were not members of the bargaining unit to which the rangers sought inclusion. Thus, according to the board, no conflict of interest would be created by placing supervisors in the same bargaining unit as the supervised employees. *See Adelphi Univ.*, 195 NLRB 639, 644 (1972).
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> > To include [in] such a [bargaining] unit persons who exercise statutory supervisory authority would clearly create the conflict of interest which Congress intended to avoid.
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> *Id.*
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> After the initial decision by the ALJ, but prior to the board's final decision, the attendants were admitted to the bargaining unit. The State and intervenor did not move to reopen the record at that time because, they claim, they had no reason to do so. (The ALJ had concluded, in favor of the State, that the rangers were supervisory employees.)
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> The State sought permission in district court, however, to reopen the record and requested a remand to the agency to reflect the fact that the park attendants were now members of the bargaining unit. *See* Iowa Code §17A.19(7) (requiring showing of materiality and good reason for delay in presentation). The board and intervenor admitted in their answers to the State's petition for judicial review that park attendants are now included in the bargaining unit. The State's application to remand to the agency was denied.
>
> Because the board relied so heavily on its erroneous assumption that the affected employees were not members in the bargaining unit (the board mentioned this "fact" five

> times in its conclusions of law), we believe that it is necessary to remand this case to the board for additional findings and conclusions in light of the true status of the park attendants.
>
> We therefore remand to the board for a decision based on the existing record, with the addition of the new evidence regarding the attendants' inclusion in the bargaining unit. We retain jurisdiction for a final disposition of this case following a ruling by the board, which shall file its final decision directly with this court.

Immediately following issuance of the Supreme Court's order remanding the case, the State filed with us a "motion for evidentiary hearing and request for oral argument."

We issued a notice of hearing, granting the State's motion and scheduling a hearing for July 1, 1996. The parties were notified that, consistent with the Supreme Court's order, the scope of the hearing would be limited to the receipt of evidence directly related to the bargaining unit status of park attendants and to the presentation of oral arguments concerning the merits of the case in light of the record as thus supplemented. After continuances requested by the parties, the hearing was held before us on August 28, 1996.

At hearing the State was represented by Gregg Schochenmaier, IDOP General Counsel, and Linda Hanson, IDOP Director. SPOC was represented by its attorney, Pamela Prager. At the hearing we took official notice of agency records in PERB Case No. 4852, the case in which the park attendants were amended into the AFSCME-represented bargaining unit. Both parties filed post-hearing briefs on September 6, 1996.

EVIDENTIARY ISSUES

At the hearing on remand, the State sought to introduce a considerable amount of documentary evidence and testimony, all objected to by SPOC on the ground that the evidence did not relate to the bargaining unit status of the park attendants and exceeded the scope of the instructions of the Supreme Court. We sustained most of SPOC's objections, mindful of the Court's instruction that we issue our decision based upon the existing record, supplemented only by new evidence regarding the true bargaining unit status of the park attendants.[1]

The State also offered the AFSCME collective bargaining agreement into evidence, and we reserved ruling on SPOC's objection to its admission. Since the park attendants' coverage under provisions of the AFSCME contract is a fact related to their changed bargaining unit status and may be helpful in understanding one of the State's arguments in this case, we overrule SPOC's objection and admit the AFSCME contract as Remand Exhibit 1.

In accord with the Supreme Court's order remanding this case to us for a decision based on the existing record, with the

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[1]The rejected evidence the State sought to introduce consisted of additional opinion testimony of DNR employees as to whether park rangers are supervisors, evidence concerning the park rangers' authority to evaluate and discipline employees, and other such evidence which we viewed as exceeding the scope of the Court's remand order. We believed it would be unfair to the opposing party and contrary to the Court's instructions to allow the State to relitigate other portions of its case before us on remand. Although we sustained SPOC's objections as to most of the evidence offered by the State, we received the State's offer of proof which included the exhibits and summarized the testimony it believed we should have received at the remand hearing.

addition of the new evidence regarding the attendant's bargaining unit status, we issue the following additional findings of fact and conclusions of law.

ADDITIONAL FINDINGS OF FACT

On June 22, 1993, PERB issued an order amending an existing bargaining unit of blue-collar employees represented by AFSCME/Iowa Council 61 to include the job classification of park attendant. The park attendants are now covered by the provisions of the 1995-97 collective bargaining agreement negotiated by AFSCME and the State. As to the first step of the grievance procedure, that agreement provides as follows:

> **Section 2 Grievance Steps**
> **Step 1**
> Within seven (7) calendar days of receipt of the written grievance from the employee or his/her Union representative, the supervisor will meet with the appropriate Union representative at a mutually agreed upon time and date (with or without the aggrieved employee) and attempt to resolve the grievance. A written answer will be placed on the grievance following the meeting by the appropriate supervisor and returned to the employee and the Union representative within seven (7) calendar days from receipt of the written grievance submitted to the supervisor.

ADDITIONAL CONCLUSIONS OF LAW

It is necessary in the first instance to address confusion which has developed regarding the new bargaining unit placement of the park attendants. It seems apparent to us from the Supreme Court's remand order that the Court is under the impression that the park attendants were amended into "the" bargaining unit to which the rangers sought inclusion; i.e., the SPOC bargaining unit.

In fact, this is not the case. In the State's petition for judicial review, the State alleged that park attendants were amended into a different unit, the blue-collar bargaining unit represented by AFSCME/Iowa Council 61. PERB and intervenor SPOC both admitted in their respective answers to the State's petition that park attendants are now included in a bargaining unit, but in a unit represented by AFSCME, not the bargaining unit represented by SPOC.

In its remand order, the Court noted that we relied heavily in our final decision on the presumed fact that park attendants and DNR aides were not members of the bargaining unit to which the rangers sought inclusion. This "presumed fact" remains true today. The park attendants are members of an AFSCME-represented bargaining unit, not the SPOC-represented bargaining unit to which the rangers seek inclusion. The DNR aides remain unrepresented and are not members of any bargaining unit.

In our Decision on Appeal, we determined that rangers do not exercise supervisory authority over park attendants. Although the ALJ had suggested that the rangers might be supervisors based upon their authority to assign and direct the work of park attendants, we determined that the rangers' authority in this regard was indicative of leadman status rather than true supervisory authority.[2] We also determined that rangers act as leadmen, and

[2]It was apparent from the arguments of the parties at the hearing on remand that they disagreed as to the nature of our holding with respect to the rangers' authority to assign and direct park attendants. Although our decision contained some discussion about our belief that the rangers should not be found to be

not true supervisors, in assigning and directing DNR aides. We further concluded that, although rangers exercise some supervisory authority to hire DNR aides, they should not be subject to the statutory exclusion on this basis because DNR aides are "non-unit" employees, i.e., not included in the SPOC bargaining unit to which the rangers seek inclusion. We did so based upon our application of federal labor relations decisions interpreting the definition of a supervisory employee in light of the purposes underlying the supervisory exclusion.[3]

We believe that application of the federal analysis makes sense, and are concerned that too literal and strict a construction of the statutory supervisory criteria could result in the unnecessary exclusion of employees where their occasional exercise of supervisory authority over non-unit employees (i.e., those not

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Footnote 2 - continued
statutory supervisors on this basis even if they exercised some supervisory authority to assign and direct attendants (since attendants were not in the SPOC bargaining unit), our conclusion was that rangers are not supervisors based upon their authority to assign and direct, but, rather, are leadmen in this regard.

[3]The State argues that we should not look beyond the statutory supervisory definition on its face in determining whether rangers are supervisors based upon their authority to hire DNR aides. However, we believe it is appropriate to consider federal case law interpreting the definition of a supervisory employee. PERB is not compelled to follow NLRB precedent, particularly where differences exist between Iowa and federal statutory provisions or where differences between bargaining in the public and private sectors justify departure from NLRB policy. [See Greater Community Hospital v. PERB, _____ N.W.2d _____ (Iowa 1996). S.Ct. No. 137/95-269 (September 18, 1996).] However, since the Iowa Act's definition of supervisory employee was taken from the definition in the National Labor Relations Act, 29 U.S.C.A. §152(11), PERB and the Iowa Supreme Court have long relied on federal court decisions and principles in determining who is a supervisory employee. City of Davenport v. PERB, 264 N.W.2d 307, 312-313 (Iowa 1978).

in the same bargaining unit) does not create the type of conflict of interest the supervisory exclusion was intended to address. We are concerned that, for example, teachers who have authority to assign and direct educational classroom aides could be unnecessarily excluded from bargaining rights under the PERA if the supervisory exclusion is interpreted too strictly, as we believe the ALJ did and as the State would have us do. The PERA is written broadly so as to permit a large number of public employees to be eligible for coverage. Accordingly, the section 20.4 exclusions should be read narrowly so as to promote the Act's broad application. Iowa Assn. of School Boards v. PERB, 400 N.W.2d 571, 576 (Iowa 1987).

When we re-examine our conclusions in light of the additional fact that park attendants are now included in an AFSCME-represented bargaining unit, we find that those conclusions are not affected by this additional fact. Since we determined that rangers exercise no supervisory authority over park attendants, but rather function merely as leadmen in assigning and directing them, the addition of the attendants to the AFSCME-represented unit does not alter this conclusion.

Since the unit status of DNR aides has not changed, our conclusions regarding the rangers' authority vis-a-vis the DNR aides are not altered in any way by the change in the bargaining unit status of the park attendants.

The State points out what it characterizes as a new issue on remand regarding the rangers' authority to adjust the grievances of

park attendants. Since park attendants are now covered by the AFSCME contract, and since rangers function as the first step of the contractual grievance procedure, the State argues that they "adjust grievances" within the meaning of section 20.4(2) and are thus statutory supervisors on this basis.

We have previously held that functioning as the first step of the grievance procedure, in and of itself, is not sufficient to indicate authority to "adjust grievances" within the meaning of section 20.4(2). In City of Oskaloosa, PERB Case No. 5173 (1995), the Board determined that, although the collective agreement's provisions clearly contemplated participation by the grievant's immediate "supervisor" (there, a fire department captain), mere participation or involvement in the grievance procedure is not equivalent to the authority to actually "adjust" disputes concerning the interpretation or application of the collective bargaining agreement. Id. at 14. See also City of Des Moines v. PERB, 264 N.W.2d 324, 329 (Iowa 1978).

In the present case, no evidence was offered by the State of situations where the rangers have actually independently adjusted grievances of park attendants as the first step in the AFSCME/State grievance procedure. In its argument to the Board on remand, the State pointed out that testimony it sought to introduce would have established simply that the rangers function as the first step of that grievance procedure. See Transcript of Hearing on Remand, pp. 79-80.

The record does not establish that rangers are "supervisors" within the meaning of section 20.4(2) based upon their authority to adjust the grievances of other public employees.

In summary, after considering the previously-existing record as supplemented by the new evidence regarding the park attendants' inclusion into an AFSCME-represented bargaining unit, our essential conclusions concerning the alleged supervisory status of the park rangers remain unchanged.

The park attendants' new unit status has not in any way affected the park ranger/DNR aide relationship or our conclusions concerning alleged supervisory status based thereon. Nor does the park attendants' inclusion into an AFSCME-represented unit alter our prior conclusion that the rangers are not true supervisors on the basis of their authority concerning the attendants. The park rangers are lead persons as to the park attendants, rather than true supervisors, regardless of the attendants' bargaining unit status.

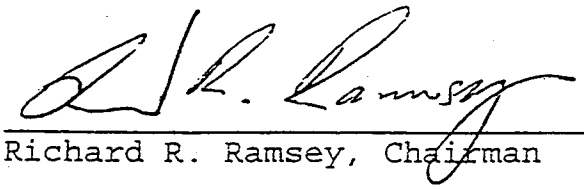
Consequently, we conclude that the park rangers are bargaining-eligible nonsupervisory employees who are appropriately included within the SPOC-represented unit, and therefore enter the following

ORDER

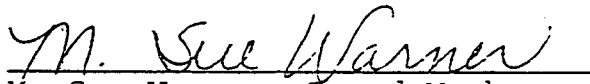
The bargaining unit of employees of the State of Iowa represented by the State Police Officers Council is hereby amended to include the classifications of Park Ranger I, II and III.

DATED at Des Moines, Iowa this 26th day of September, 1996.

PUBLIC EMPLOYMENT RELATIONS BOARD



Richard R. Ramsey, Chairman



M. Sue Warner, Board Member